IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Jaggu alias Jagdish Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.1602/2006

DATE OF ORDER :: December 11th 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Ramesh Purohit, for the petitioner.

Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

Issue notice for final disposal. Mr.Ashok Upadhyaya accepts notice for the non-petitioner State.

With the consent of the learned counsel for the parties, the petition is finally heard and being decided at the admission stage.

Order dt. 9.10.2006 passed by the Additional Sessions Judge (Fast Track) No.1, Bhilwara (for short 'the trial court'

hereinafter) has been impugned by the petitioner by filing the instant criminal misc. petition under section 482 Cr.P.C.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioner that Sessions Case No.83/2005, State vs. Jagdish alias Jaggu & Ors. was pending before the trial court. Co-accused Vikram Singh filed a transfer petition being S.B.Cr.Misc. Transfer Petition No.22/2006 before this Court under section 407 Cr.P.C. seeking transfer of the case from the trial court to any other court at Bhilwara. This Court vide order dt. 10.10.2006, allowed the transfer petition and directed the Sessions Judge, Bhilwara to transfer the Sessions Case No.83/2005 either to his own Court or to any other Court of Additional Sessions Judge (Fast Track) at Bhilwara. Learned counsel for the petitioner submits that the matter was fixed before the trial court for recording the evidence of the prosecution witnesses. On 9.10.2006, two prosecution witnesses viz. Sardar Singh and Shanker appeared. An application was filed on behalf of the petitioner stating therein that the file of the case was sent to the counsel representing the co-accused Vikram Singh in the High Court and the same has not been received and, therefore, time was sought and requested

the trial court to record the statements of the witnesses on the next date. The trial court dismissed the application and recorded the statements examination-in-chief of two witnesses as PW.3 and PW.4 respectively and for cross-examination of these witnesses, an adjournment was sought by counsel Shri Naresh Kumar Dad appearing therein on the very ground that he does not have the file of the case since it has been sent to the counsel representing in the High Court and the same has not been received back after the decision on transfer petition. The transfer petition was allowed by this court on 10.10.2006 directing to transfer the case from the trial court. Yet the adjournment was declined by the trial court and an opportunity to cross-examine these two witnesses was closed. In my view, the trial court fell in error in not affording a reasonable opportunity to the accused for cross-examining the material witnesses viz. PW.3 Sardar Singh and PW.4 Shanker and, therefore, it is expedient, in order to secure the ends of justice, to afford an opportunity to the accused-petitioner to cross-examine the prosecution witnesses viz. PW.3 Sardar Singh and PW.4 Shanker.

In the result, the criminal misc. petition is allowed. Order impugned dt. 9.10.2006 is set aside and the trial court is directed to recall the prosecution witnesses viz. PW.3 Sardar

Singh and PW.4 Shanker for the purpose of cross-examination on the next date and afford an opportunity to the accused to cross-examine these witnesses. However, if the counsel appearing for the accused fails to cross-examine these witnesses when they are produced before the Court, no further opportunity to cross-examine will be granted.

[H.R.PANWAR],J.

m.asif/-